

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Malyarov et al.	Docket No.:	2008P26174 US
Application No.:	10/813,575	Examiner:	WRIGHT
Filed:	3/31/2004	Art Unit:	1797
Customer No.:	26474	Confirmation No.:	4329

For: Rotary luminometer

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF UNDER 37 C.F.R. §41.41

Sir:

This is a Reply Brief to the Examiner's Answer of August 07, 2009. Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account 14.1437. Please credit any excess fees to such account.

Status of Claims

The Examiner has withdrawn the rejection of claims 5 – 9. The rejection of claims 1 – 4 and 10 – 17 is being appealed.

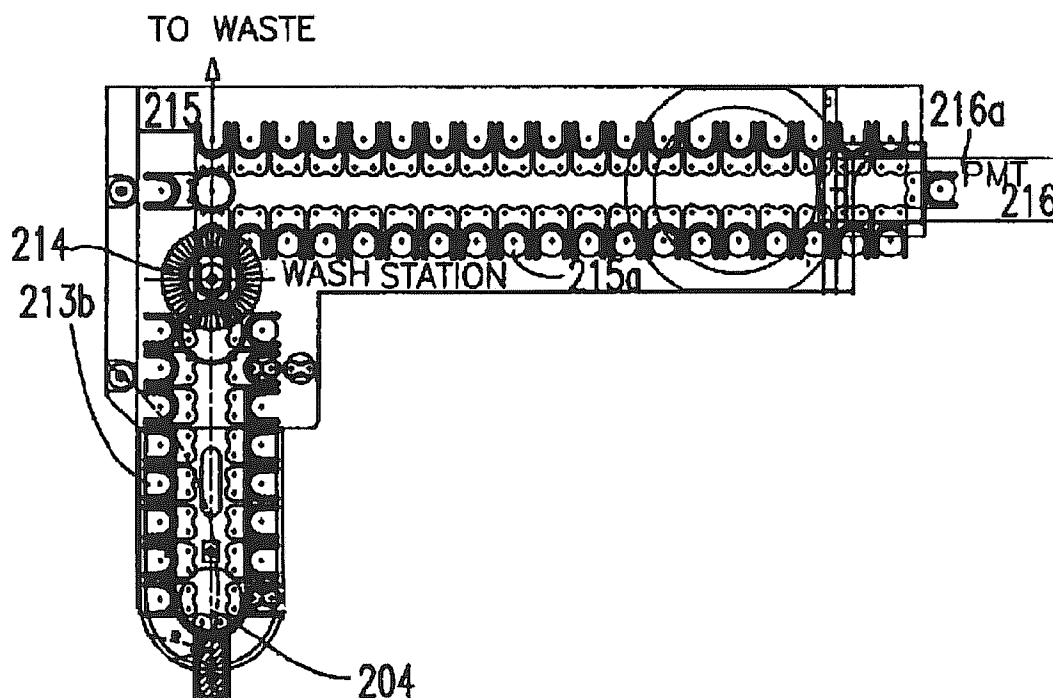
Grounds of Rejection to be Reviewed on Appeal

Claims 1 – 4 and 10 – 17 are rejected under 35 U.S.C. §102(b) in view of US 5,885,529 to Babson et al. (hereinafter, “Babson”).

Arguments

The summary of the claimed subject matter provided on page 3 of the Examiner’s Answer does not acknowledge that the read station is also shown in Figures 4 and 5A and that the entry position of the read station is also shown in Figure 4.

The Examiner fails to address the interrelationships between the elements of claim 1. Claim 1 requires a transport device capable of receiving vessels from a wash station, transporting them from the wash station through a defined path, and transferring a vessel from the defined path into a read station at an entry position. A simplified version of Babson’s Figure 2A is represented below to facilitate discussion.



The Examiner asserts chain 213b is identical to the transport device recited in claim 1. Chain 213b, however, rotates between wash station 214 and pipette station 204. Chain 213b does not receive vessels from a wash station, transport them from the wash station through a defined path, and transfer a vessel from the defined path into a read station at an entry position.

According to Babson only chain 215a transports vessels from wash station 214 to tube reading station 216. The Examiner does not identify chain 215a as the transport device. Instead, the Examiner identifies chain 215a as the read station. Chain 215a is not identified by Babson as a read station; tube reading station 216 is identified by Babson as a read station. A person having ordinary skill in the art would not identify chain 215a as a read station. The Examiner identifies chain 215a as the read station, because Babson's read station is not rotatable between an entry position and a read position as required by claim 1. Unlike Babson's tube reading station 216, chain 215a rotates.

Appellants respectfully submit that the rationale underlying the present rejection is flawed. Babson does not anticipate the present claims, because Babson does not describe a read station capable of rotating a transferred vessel from an entry position to a read position independently of motion of said plurality of vessels through a defined path. The rejection is in clear error and should be reversed.

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